



**STATE OF ILLINOIS  
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:	)	
	)	
<b>KATHYRN GREVAS,</b>	)	
	)	
Complainant,	)	
	)	CHARGE NO: <b>2002CH0048</b>
and	)	EEOC: <b>N/A</b>
	)	ALS NO: <b>11917</b>
<b>HARRY AND FRED MAZZONI,</b>	)	
	)	
Respondents.	)	

**RECOMMENDED ORDER AND DECISION**

This matter comes to be heard on Respondents' Motion to Dismiss with exhibits attached. Complainant did not file a Response to the Motion. All parties appeared on March 27, 2003 and orally argued the motion before the Administrative Law Judge. Taking the arguments under advisement, the motion is ready for decision.

**CONTENTIONS OF THE PARTIES**

Respondent contends that this matter should be dismissed as a matter of law because the Charge (Charge No. 2002 CH 0048) alleged in the Illinois Human Rights Complaint (ALS No. 11917) has been fully investigated by the Illinois Department of Human Rights and a decision to dismiss the Charge due to Lack of Substantial Evidence was rendered by the Department. Complainant further contends that Complainant requested a review of the Charge and the Department dismissed the Charge due to Lack of Substantial evidence and the initial decision was upheld. Complainant responded by admitting to the facts as alleged by Respondents, but argued that the matter should

proceed since the Respondents did not respond to the Complaint. Respondents stated that they were never served a copy of the Complaint.

### **FINDINGS OF FACT**

1. On July 9, 2002, Complainant filed Charge No. 2002 CH 0048 with the Illinois Department of Human Rights (Department) alleging that she was evicted from her apartment by Respondents due to her mental handicap, and that she was harassed and retaliated against because she had filed a previous charge with the Department.

2. The Department investigated the Charge and issued a finding of Lack of Substantial Evidence on October 18, 2002.

3. Complainant filed a timely Request for Review with the Department on October 31, 2002.

4. On December 10, 2002, the Department, after its review, issued a finding of Lack of Substantial Evidence and upheld the initial decision.

5. On October 28, 2002, the Complainant filed a Complaint with the Illinois Human Rights Commission (Commission), under ALS No. 11917. The Complaint alleged that she was evicted from her apartment by Respondents due to her mental handicap. The Complainant also alleged additional charges of retaliation and harassment.

6. Complainant's filed Complaint with the Commission has been resolved at the Department, and as such the Commission lacks jurisdiction of the matter.

7. Respondent's Motion to Dismiss appears on its face to be well grounded.

8. Respondent is entitled to an order of dismissal as a matter of law.

9. The Complaint in this matter should be dismissed, with prejudice, due to the lack of jurisdiction.

### **CONCLUSION OF LAW**

The Human Rights Commission lacks jurisdiction of this matter because Complainant's Complaint was resolved at the Illinois Department of Human Rights when the Department rendered a finding of Lack of Substantial Evidence and upheld the decision upon Complainant's Request for Review.

### **DETERMINATION**

Respondent's Motion to Dismiss for Lack of Jurisdiction should be granted because based upon the admissible evidence in the record, which appears on its face to be valid, the Commission lacks jurisdiction of this matter due to the Illinois Department of Human Rights' dismissal on the basis of Lack of Substantial Evidence.

### **DISCUSSION**

Section 8-106.1 of the Human Rights Act provides that either party may move, with or without supporting affidavits, for a summary order in its favor. If the pleadings and affidavits, if any, show that there is no genuine issue as to any material facts and that the moving party is entitled to a recommended order as a matter of law, the motion must be granted. Cano v. Village of Dolton, 250 Ill.App.3d 130, 620 N.E.2d 1200, 189 Ill.Dec. 883 (1<sup>st</sup> Dist. 1993). 56 Ill.Admin. Code §5300.530 (b) and §5300.730 of the Procedural Rules of the Commission provides that the Administrative Law Judge has authority to hear any proper motions or objections, including motions to dismiss.

The dispositive issue for this motion is whether Complainant may file a Complaint with the Illinois Human Rights Commission based upon Charges that were dismissed by the Illinois Department of Human Rights.

Under 775 ILCS 5/7A-102(D)(2)(a), of the Illinois Human Rights Act (Act), the Illinois Department of Human Rights determines whether there is substantial evidence that an alleged civil rights violation has been committed. If the Department determines that there is no substantial evidence, the Charge “shall” be dismissed. *Id.* If the Department determines that there is substantial evidence, the Department will immediately issue a Complaint on behalf of the aggrieved party where the Charge is not dismissed. 775 ILCS 5/7B-102(D)(2)(a) and (b) of the Act. The only other means by which a Complainant may file a Complaint with the Commission is where conciliation efforts with the Department have failed or where the 365-day limit for investigation of the Charge has been surpassed. 775 ILCS 5/7A-102(F)(1) and (2) and 5/7A-102(2) of the Act.

Under 775 ILCS 5/7-101.1(A) of the Act, the Chief Legal Counsel for the Department has jurisdiction to hear and determine requests for review of a decision by the Department to dismiss a Charge. If the Chief Legal Counsel determines that the Department’s decision should be sustained, an order would follow stating as much. Ill.Admin.Code §2520.560(a)(1) and §2520.587.

In this instance, the facts show that the Charge filed with the Commission by the Complainant was originally dismissed by the Department and then by the Chief Legal Counsel after review. Thus, Complainant is not entitled to have the same charge filed as a Complaint with the Commission. See, Wallace v. Human Rights Commission, 261 Ill.App.3d 564, 633 N.E.2d 851 (1<sup>st</sup> Dist. 1994). Therefore, the Commission lacks jurisdiction of the Complaint filed by the Complainant.

### **CONCLUSION**

Section 8-106.1 of the Human Rights Act provides that either party may move, with or without supporting affidavits, for a summary order in its favor. If the pleadings and affidavits, if any, show that there is no genuine issue as to any material facts and that the moving party is entitled to a recommended order as a matter of law, the motion must be granted. Cano v. Village of Dolton, 250 Ill.App.3d 130, 620 N.E.2d 1200, 189 Ill.Dec. 883 (1<sup>st</sup> Dist. 1993). 56 Ill.Admin. Code §5300.530 (b) and §5300.730 of the Procedural Rules of the Commission provides that the Administrative Law Judge has authority to hear any proper motions or objections, including motions to dismiss.

It is clear that the Human Rights Commission does not have jurisdiction of this matter because the Charge filed with the Illinois Department of Human Rights was dismissed on the basis of Lack of Substantial Evidence.

### **RECOMMENDATION**

I recommend that this matter be dismissed with prejudice due to the Commission's lack of jurisdiction

HUMAN RIGHTS COMMISSION

BY: \_\_\_\_\_  
NELSON E. PEREZ  
ADMINISTRATIVE LAW JUDGE  
ADMINISTRATIVE LAW SECTION

ENTERED: May 9, 2003